

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of

CHANNEL 20 TV COMPANY)

Amendment of Section 73.606(b))

Table of Allotments,)

TV Broadcast Stations. (Sterling,)
Colorado))

RM-_____

MM Docket No. _____

Amendment of Section 73.622(b),)

Table of Allotments,)

Digital Television Broadcast)

Stations. (Sterling, Colorado))

To: Chief, Video Division

PETITION FOR RULE MAKING

CHANNEL 20 TV COMPANY

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Summary

Channel 20 TV Company (“Channel 20 TV CO”), licensee of station KUPN(TV) (“KUPN”), NTSC Channel 3, and permittee of Digital Channel 23, Sterling Colorado, by its attorneys and pursuant to Sections 1.401(a), 1.420(i), and 73.623 of the Commission’s Rules, 47 C.F.R. §§ 1.401(a), 1.420(i), 73.623, hereby petitions for rule making to amend the Television Table of Allotments, 47 C.F.R. § 606(b), and the Digital Television Table of Allotments, 47 C.F.R. § 73.622(b), by changing the allotments of NTSC Channel 3 and Digital Channel 23, from Sterling, Colorado to Fort Morgan, Colorado

In addition, Channel 20 TV CO respectfully requests that the Commission waive the minimum mileage separation requirement of Section 73.610 of the Commission’s Rules, 47 C.F.R. § 73.610.

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TV CO proposes to amend the Television Table of Allotments and the Digital Television Table of Allotments, as follows:

Television Table of Allotments

<u>Community</u>	<u>Channel No.</u>	
	<u>Present</u>	<u>Proposed</u>
Sterling, Colorado	3, *18+	*18+
Fort Morgan, Colorado	-	3

Digital Television Table of Allotments

<u>Community</u>	<u>Channel No.</u>	
	<u>Present</u>	<u>Proposed</u>
Sterling, Colorado	23	-
Fort Morgan, Colorado	-	23

The proposed changes in allotments will permit Channel 20 TV CO to collocate its antenna for KUPN on a FAA approved tall tower in Hoyt, Colorado, facilitating aeronautical and economic efficiencies. The change would also enable Channel 20 TV CO to serve an expanded area, bring television service to significant white and gray areas, and provide the first local broadcast service to the community of Fort Morgan.

In addition, Channel 20 TV CO respectfully requests, as supported in the attached Engineering Statement of Robert D. Culver, P.E. ("Culver Engineering Statement"), the Commission waive the minimum mileage separation requirement of Section 73.610 of the Commission's Rules, 47 C.F.R. § 73.610.

1. Background

Channel 20 TV CO is the licensee of Station KUPN, NTSC Channel 3, Sterling, Colorado, Facility ID No. 63158, and Channel 23, Sterling, Colorado is the

paired digital channel. Channel 20 TV CO requests that the Commission change the listed communities of license of Channels 3 and 23 from Sterling to Fort Morgan, both communities are located in the state of Colorado and within the Denver DMA. KUPN is currently serving Sterling, its community of license, as a full-time 100% satellite station of UPN affiliated station KTVD(TV), Channel 20, Denver, Colorado. If permitted to change its community of license, KUPN proposes to serve Fort Morgan as an independently programmed station, creating Fort Morgan's first and only local broadcast television station and bring new independent programming to almost 3,000,000 people.

Channel 20 TV CO proposes to move its antenna to a FAA approved tower that is to be constructed in Hoyt, Colorado, ("New Tower"). The New Tower is 2000 feet above ground, significantly taller than the 731-foot tower in Sterling where KUPN's antenna is currently located. Relocation of the antenna to the New Tower would allow Channel 20 TV CO to realize efficiencies related to the collocation of its antenna with other broadcasters, as well as to the extension of its signal to a larger service area and increased population, including substantial white and grey area.

As provided in the Culver Engineering Statement, the New Tower is separated from KREG-TV, Channel 3, Glenwood Springs, Colorado, Facility ID No. 70578, ("KREG") by 296.45 kilometers, while the required separation is 304.9 kilometers. Thus, moving KUPN's antenna to the New Tower will result in a short-spacing of 8.45 kilometers (5.6 miles). In order for KUPN to operate on Channel 3 once the community of allotment is changed to Fort Morgan, a waiver of the

separation requirement is necessary. As demonstrated below, a waiver is in the public interest. Because the continental divide lies between the proposed New Tower location and KREG, an eight-kilometer short-spacing will not result in any real loss of service to KREG's viewers.

2. Request to Modify KUPN's Community of License for Television Channel 3

This petition is submitted pursuant to Commission Rule 1.420(i), as well as the Commission's order promulgating that rule. *See Amendment of Commission's Rules Regarding Modification of FM and TV Authorizations to Specify a New Community of License*, MM Docket No. 88-526, *Report and Order*, 4 FCC Rcd 4870 (1989), *recon. granted in part*, 5 FCC Rcd 7094 (1990) ("*Report and Order*"). Commission Rule 1.420(i) provides that the Commission may modify the license or permit of a television broadcast station to specify a new community of license where the amended allotment would be mutually exclusive with the licensee's or permittee's present assignment. *See* 47 C.F.R. § 1.420(i). In the *Report and Order*, the Commission indicated that a change in the community of license would be approved if (i) the new allotment is mutually exclusive with the existing allotment and (ii) the allotment to the new community "would result in a net service benefit for the communities involved (that is, if the plan would result in a preferential arrangement of allotments)." *See Report and Order*, 4 FCC Rcd at 4873.

Channel 20 TV CO submits that the proposed amendment to the Television Table of Allotments meets the Commission's criteria. The proposed change in the community of license of KUPN to Fort Morgan is mutually exclusive with the

existing allotment to Sterling. See Culver Engineering Statement. Moreover, the change of community of license of KUPN would result in a net service benefit for the communities involved and is in the public interest.

First, the reassignment will provide the first local service to a larger faster growing area and first television service to a substantial number of persons. The change furthers the Commission's highest priority with respect to television allotment, to provide at least one television service to all parts of the United States.¹

Morgan County, due to its size and demographics, is deserving of a local television broadcast station.² Fort Morgan is an incorporated community and is the county seat of Morgan County, which has a population of 27,171.³ Fort Morgan has its own post office and zip code, and is governed by an elected mayor. The community of Fort Morgan also has its own police department, a county sheriff's office, and a fire department. In addition, Fort Morgan has 15 churches, 24 schools,

¹ The Commission's "television allotment priorities are: (1) provide at least one television service to all parts of the United States; (2) provide each community with at least one television broadcast station; (3) provide a choice of at least two television services to all parts of the United States; (4) provide each community with at least two television broadcast stations; and (5) assign any remaining channels to communities based on population, geographic location, and the number of television services available to the community from stations located in other communities." *Amendment of Section 73.606(b), Table of Allotments, TV Broadcast Stations (International Falls and Chisholm, Minnesota)*, 2001 FCC LEXIS 5435 (October 5, 2001).

² As noted above, KUPN is currently a full-time 100% satellite of KTVD, Channel 20, Denver. Because of the small size of Sterling, it is not economically feasible for Channel 20 TV CO to operate as an independent television station serving Sterling. However, changing KUPN's community of license to Fort Morgan, creates an economic base for the independent operation of the station.

³ See US Census <http://quickfacts.census.gov/qfd/dtstrd/08/08087.html>

12 banks, a veterinary hospital, 14 restaurants, 9 motels, approximately 50 other businesses, as well as a multitude of social and civic organizations.⁴ Moreover, Morgan County is growing at a rate of 23.8%. On the other hand, Logan County in which Sterling is located has a population of 20,504 and is growing at a rate of 16.7%.⁵

With the reallocation of Channel 3 to Fort Morgan and because of the availability of the New Tower, KUPN would almost double its service area from approximately 26,000 square kilometers to 51,000 square kilometers and would increase the number of persons served by a multiple of 37 from 81,000 persons to approximately three million persons. Furthermore, a maximum television facility operating from the New Tower will result in the provision of the first television service to 40,860 persons and a second television service to 18,630 persons. When the loss of service from the change in location is considered, there remains a net gain of service to 34,250 persons in white area and 11,850 persons in gray area.

Second, Sterling and the surrounding area will not be harmed by the reallocation of Channel 3 and the loss of present KUPN programming. Because KUPN is a full-time 100% satellite of Denver station KTVD, present KUPN viewers will be able to continue to receive KTVD programming on cable and satellite because Sterling and surrounding counties are within the Denver DMA and the signal of KTVD is carried thereon. Nielsen estimates cable and satellite

⁴ Materials provided by Morgan County and Fort Morgan Chamber of Commerce.

⁵ See US Census <http://quickfacts.census.gov/qfd/states/08/08075.html>

penetration in the counties which will lose KUPN service by the relocation as follows:⁶

County	TV Households	Cable/Satellite Penetration
Logan, CO	8,510	90.6%
Sedgwick, CO	1,090	35.8%
Phillips, CO	1,890	100.0%
Yuma, CO	4,040	77.0%
Kimball, NE	1,690	100.0%
Cheyenne, NE	3,920	96.9%
Deuel, NE	890	83.1%
Total	22,030	87.7%

It is important to note that while cable is available only to those homes passed by a system, DBS satellite is available to every home desiring to subscribe to the service and the local Denver television stations are available from DirecTV and EchoStar.

Finally, allotted but unused noncommercial Channel 18, remains available to provide local service to Sterling.

⁶ Nielsen Estimates of Total and TV Households, Cable & Cable +ADS, TV households as of January 2002 and cable and cable plus ADS households as of May 2002. There is some loss area in the western most portion of Dundy County, NE (Wichita-Hutchison DMA) where cable/satellite penetration is 97.2%.

3. Request for Waiver of the Minimum Mileage Separation Requirement

Channel 20 TV CO respectfully requests the Commission waive the minimum mileage separation requirement of section 73.610 of the Commission's Rules, 47 C.F.R. § 73.610, insofar as the proposal herein deviates therefrom. As stated in the Culver Engineering Statement, the separation between the New Tower and co-channel station KREG is 296.45 kilometers. The minimum mileage separation provided in Commission Rule 73.610 for Zone 2 is 304.9 kilometers, thus, relocating the tower results in a short spacing of 8.45 kilometers.

The Commission has developed guidelines for evaluating waiver requests of the separation requirement.⁷ These factors include a showing of: (1) the unsuitability of the existing site or an inability of the licensee to reach areas containing a significant number of viewers who lack service, a network service, or an "independent" service; (2) the magnitude of short spacing; (3) the nature and extent of any predicted loss of service that would result from short spacing; (4) the aeronautical and environmental benefits and drawbacks of locating a tower in a particular area; (5) the concerns, if any, expressed by the licensee(s) to which short-spacing would result; and (6) the extent to which a licensee obtained its license knowing there were spacing constraints imposed in a rulemaking proceeding. *See*

⁷ Although the Commission has developed guidelines for evaluating waiver requests, in appropriate situations it will look "beyond the bare threshold showing normally required." *Caloosa Television Corporation*, Memorandum Opinion and Order, 4 FCC Rcd 4762 at ¶ 3 (1989).

Western Broadcast Corporation of Puerto Rico, 66 RR 2d 78 (MMB 1991) (citations omitted); *Sarkes Tarzian, Inc.*, 6 FCC Rcd 2465 at ¶ 10 (1991) (citations omitted).

Based on relevant factors, waiver of the separation requirement is in the public interest.

First, as demonstrated in the Culver Engineering Statement, the relocation of KUPN's antenna will result in a dramatic increase in the service area and the number of persons receiving the signal. In *Pappas Telecasting Inc.*, 49 RR 2d 1688 at ¶ 11 (1981), the Commission determined that a waiver of the minimum mileage distance requirement was in the public interest because of a net increase in service to more than 54,000 persons. In this case, a waiver of the minimum mileage distance requirement will result in a net increase of service to almost three million persons.

Second, here, the magnitude of the requested short-spacing (8.45 kilometers) is *de minimis* when compared to the minimum mileage requirement for the channel (304.9 kilometers). Additionally, the degree of short-spacing is well within the "range of short-spacing that has been approved in the past upon an appropriate public interest showing." See *Sarkes Tarzian, supra*, at ¶ 12; *Clay Broadcasting, Inc.*, 50 RR2d 1273 (1982); and *Van Curler Broadcasting Corp*, 24 RR 1079 (1963).

Third, the service provided to white and gray area resulting from a relocation of the KUPN antenna to the New Tower is significant. The move will result in bringing first television service to a net of 34,250 persons and a second television service to a net of 11,850 persons.

Finally, if it is necessary for the Commission to look "beyond the bare threshold showing normally required" in granting a short-spaced waiver, the request in this instance is supported by the uniqueness of the intervening terrain that reduces interference to virtually zero.⁸ In *Sarkes Tarzian, supra*, the Commission, in granting a short-spaced waiver, considered the intervening terrain barriers of the Sierra Nevada Range and the Carson Range that further reduced the probability of objectionable interference to the short-spaced station. The Commission noted that the interference from petitioner's station would be no greater than it would be from a fully spaced site.⁹ The Culver Engineering Statement shows that between the New Tower and the KREG site are three mountain ranges of the Rocky Mountains: the Front range; the Park range; and the Sawatch range, with peaks extending to more than 12,000 feet AMSL. Figures 6A and 6B of the Engineering Statement depict the contour profile between the sites. The engineering analysis shows that the few areas where interference is predicted generally do not fall on any communities and are mostly confined to relatively sparsely populated U.S. Forest mountain top areas. The proposed relocation is predicted to cause a net increase in interference, to only 643 people out of a total of 215,640 people in the KREG Grade B contour, far less than 1% and clearly *de minimus*.

⁸ See *Caloosa Television Corporation*, Memorandum Opinion and Order, 4 FCC Rcd 4762 (1989).

⁹ See *Western Broadcast Corporation of Puerto Rico*, 66 RR 2d 78 (MMB 1991) (the fact that intervening terrain resulted in no interference was a factor in the Commission's approval of a 61.6 kilometer short spacing in relation to a 304.9 kilometer minimum mileage distance restriction).

The above analysis clearly shows that waiver of the insignificant short spacing is in the public interest.

4. Request to Modify KUPN's Community of License Will Not Violate the Multiple Ownership Rules

The local television ownership rule, *see* 47 C.F.R. § 73.3555(b), provides that an entity may directly or indirectly own, operate or control two television stations in the same DMA if at least one of the stations is not ranked among the top four stations in the DMA and at least eight independently owned and operating full-powered television stations would remain. The change of the status of KUPN from a satellite station to one of independent programming will not violate the local television ownership rule. First, neither KTVD nor KUPN is ranked among the top four rated stations in the Denver DMA. Second, there are over eight independent voices with overlapping contours of KTVD and/or KUPN, including: KCEC(50), KCNC-TV(4), KDEN(25), KDVR(31), KRMA-TV(6), KFNR(11), KBDI-TV(12), KMGH-TV(7), KPXC-TV(59), KTVJ(14), KUSA-TV(9), KWGN-TV(2), KRMT(41), and KWHD(53).¹⁰ Therefore, the Grade B overlap of KTVD and KUPN, with the cessation of the operation of the latter as a satellite station, complies with the local television ownership rule.

5. Request to Modify KUPN's Community of License for Digital Television Channel 23

In this petition, Channel 20 TV CO also seeks to amend the listed community of KUPN's associated digital channel, Channel 23. As set forth in the Culver

¹⁰ Television and Cable Factbook 2001, at A-1 (Warren Communications News, 2001).

Engineering Statement, the proposed change in community of license and the operation on Channel 23 with maximum facilities is fully consistent with the requirements of Section 73.623(c) and 73.625(a) of the Commission's Rules. In particular, the proposal: (i) complies with the principal community coverage requirements of Section 73.625(a); (ii) can be made without disrupting any of the other DTV allotments made in the *Allotment Reconsideration Order*;¹¹ (iii) will not result in more than an additional two percent increase in interference to the population served by any other DTV station, DTV allotment or analog television broadcast station; (iv) will not result in any new interference to stations that already experience interference to ten percent or more of their population; and (v) will not result in interference that would cause another station to begin experiencing interference to greater than ten percent of its population. Hence, the proposed revision to the DTV Table of Allotments is in the public interest.


¹¹ See *Memorandum Opinion and Order on Reconsideration of the Sixth Report and Order*, MM Docket No. 87-268, 13 FCC Rcd 7418 (1998).

6. Conclusion

WHEREFORE, for the reasons set forth above, Channel 20 TV Company respectfully requests that the Commission amend the Television Table of Allotments and the DTV Table of Allotments by the reallocation of analog Channel 3 and digital Channel 23 from Sterling to Fort Morgan, Colorado, Colorado.

Respectfully submitted,

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